



## Missouri Small Business Regulatory Fairness Board

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March 28, 2012

The Honorable Jeremiah W. "Jay" Nixon  
Governor of the State of Missouri

The Honorable Robert N. Mayer  
President Pro Tem of the Missouri Senate

The Honorable Steven D. Tilley  
Speaker of the Missouri House of Representatives

Dear Governor Nixon, President Pro Tem Mayer and Speaker Tilley:

During Fiscal Year 2011, the Missouri Small Business Regulatory Fairness Board (SBRFB) helped improve the business climate for all small Missouri businesses. This is both on micro (working with individual business owners) and macro (working with state agencies) levels.

The SBRFB is the only state board that is focused solely on small business. We have made significant progress over the years in working interactively with agencies to ensure the small business perspective is addressed as new rules are made. Small business owners have relied on us to address urgent and difficult issues, both large and small.

Everyone acknowledges that small businesses are the engine of the recovery with two out of three new jobs created by small businesses. SBRFB is uniquely placed to help identify those regulations that restrict job growth in Missouri. Since its inception, SBRFB has reviewed many hundreds of regulations, acted upon dozens, and have made a difference for many small businesses to be competitive in the marketplace.

However, it has become increasingly obvious to Board members that the SBRFB lacks adequate administrative support so that the Board can function in the way it was intended when it was created by the legislature. We are pleased that the Governor and Legislature saw fit to authorize 1.5 FTE to provide this much needed support and now await adequate funding of this new staff.

In fulfilling its duties outlined in 536.310 RSMo, the SBRFB shall provide an evaluation report to the governor and the general assembly. Please accept the attached such report and evaluation.

Best Regards,

A handwritten signature in cursive script that reads "Vicki Englund".

Vicki Englund, Chair  
SBRFB

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## **Background**

The Missouri Small Business Regulatory Fairness Board (SBRFB) was established by the Missouri General Assembly under HB 576 and SB 456; and, patterned after the United States Small Business Administration, Office of Advocacy, and National Ombudsman which serve as voices for small businesses in the Federal Government.

The legislation is comprised of several key elements: 1) State agencies take into account small businesses when promulgating new rules; 2) State agencies take into account small businesses when enforcing new rules and regulations; 3) State Agencies take into account small businesses when reviewing existing rules to see if they are still needed; 4) Established the Small Business Regulatory Fairness Board; 5) Granted judicial review to small businesses; and 6) Defined small businesses as a for-profit enterprise with 100 or fewer full-time or part-time employees.

The Missouri Department of Economic Development, in accordance with HB 576 and SB 456, provides staffing and support for the Commission.

## **Board Responsibilities**

RSMo, 536 states three main responsibilities for the board:

- 1) Provide state agencies with input regarding rules that adversely affect small businesses;
- 2) Solicit input and conduct hearings from small business owners and state agencies regarding any rules proposed by a state agency; and
- 3) Provide an evaluation report to the Governor and the general assembly, including any recommendations and evaluations of state agencies regarding regulatory fairness for Missouri's small businesses. The report shall include comments from small businesses, state agency responses, and a summary of any public testimony on rules brought before the board for consideration.

## **Meetings**

Five meetings were held in Fiscal Year 2011 by the Board as follows:  
September 15, 2010-Kansas City

SBRFB Meeting and Public Hearing

January 26, 2011-Jefferson City  
SBRFB Meeting

February 23, 2011-Jefferson City  
SBRFB Online Conference Call Meeting

March 23, 2011-Jefferson City  
SBRFB Conference Call Meeting

## **Meetings**

April 20, 2011-Jefferson City  
SBRFB Meeting

## **New FY2011 Small Business Comments**

While the Board continued working on existing issues, we had two new inquiries initiated in FY2011.

- 1) Keith and Rachel Williston, A Mother's Love Birth Center, Independence, 7/30/2010-unfair rules and regulations regarding birth centers because the Department of Health and Senior Services regulates birth centers as ambulatory surgical centers.
- 2) Kathy Bennett, CEO and President, Bennett Packaging and Displays, Lee's Summit, 9/20/2010-the Department of Correction, Missouri Vocational Enterprises (MVE) places orders for goods and to provide services to state, city, and county governments; without utilizing the bid process.

## **Improved Communication**

Building on our FY2011 Areas for Improvement, the SBRFB has taken steps to create smoother internal communication with the agencies. We have also begun steps to create better outreach communication so small business owners know we exist. We are still lacking in areas regarding monitoring, more complete rule review, and data tracking. As our introductory letter indicates, having enough administrative support remains an issue.

## **State Agency Evaluations**

In fulfilling its duties outlined in 536.310 RSMo, the Board shall provide an evaluation report to the governor and the general assembly. The SBRFB is charged with tracking and providing results of agency compliance with SBRFB efforts. Agencies working with the SBRFB will ultimately result in higher compliance and fewer complaints from small business owners.

Providing feedback to the agencies is of prime importance, as is agency cooperation and communication back to the board. The SBRFB has created criteria and ongoing training for the agencies so that they have a clear understanding of what the board is looking for. The criteria used in making evaluations are listed at the top of each column in the following table.

## **SBRFB Agency Evaluations 2011 Fiscal Year**

In general, we have built a good working relationship with the state agencies, as can be observed by the evaluations. As we progress, the criteria need to be updated in keeping with the work of the Board as well as the agencies. We will continue to provide ongoing communication to the agencies regarding expectations, criteria, and training. The evaluation criteria for FY2012 are as follows:

Column B: 'Respond to Small Business Comments in a Timely Manner'. The agency has 60 days to respond to an initial comment.

Column C: 'Provide Complete Response to Small Business Comments' to evaluate the quality of content in the initial agency response.

Column D: 'Participate in Regulatory Fairness Meetings' refers to meeting attendance and participation by the agency liaison.

### **SBRFB Agency Evaluations 2011 Fiscal Year**

Column E: 'Participate in Regulatory Fairness Public Hearings' refers to the agency providing decision-makers and knowledgeable personnel to answer questions brought in front of the Board at the public hearings.

Column F: 'Train agency staff on SBRFB Programs,' evaluates agency effectiveness in training agency personnel on SBRFB.

Column G: 'Agency Responsiveness to SBRFB Requests' includes not only timeliness of the ongoing letters, but also the quality of content (e.g., did it answer the questions.) This refers to the subsequent letters that frequently occur back and forth as the Board works through an issue. The agency has 30 days to respond to each request. ('Adherence to Non-Retaliation Policy' to monitor the rare, but disturbing, accusations of agency retaliation against a small business owner before or after their small business comments/issues brought before the SBRFB.)

Column H: 'Complete Small Business Impact Statement' evaluates agency on both the existence and quality of content in a SBIS when small businesses are impacted by a rules change.

Column I: 'Notify SBRFB of Small Business Comments from Public' --The Board intends to more closely monitor whether the agency notifies the SBRFB of small business comments that come directly to the agency from the public and therefore do not otherwise come in front of the Board.

Column J: 'Conduct Biennial Evaluations of Rules Affecting Small Business' is only listed every odd-numbered Fiscal Year and is described below.

### **Biennial State Agency Comprehensive Report**

Per RSMo, 536.325, each state agency was required to submit, by June 13, 2011, a list of rules affecting small business to the General Assembly and the SBRFB: *The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued existence. This list and report will be issued by each state agency every odd numbered year.*

RSMo, 535.010 defines "affected small businesses" as: *"Affected small business" or "affects small business" means any potential or actual requirement imposed upon a small business or minority small business through a state agency's proposed or adopted rule that will cause direct and significant economic burden upon a small business or minority small business, or that is directly related to the formation, operation, or expansion of a small business.*

Routine review of regulations allows the agencies, and affected small businesses, to ensure that current regulations are still meeting the intended purpose. Sometimes rules can be modified to still meet the intent while lessening the impact on small businesses. In other cases, the rules may have outlived their intent and can be rescinded.

## **Biennial State Agency Comprehensive Report**

Several agencies, Department of Revenue, the Division of Professional Registration, and the Department of Natural Resources, took this review to heart, found rules that are no longer needed, and are planning to rescind those rules in the near future. These agencies are to be commended for meeting the spirit of the bi-annual report and reducing their impact on small businesses.

SBRFB strongly encourages agencies to contact SBRFB staff prior to filing a report indicating that there are no small businesses affected by any rule-making authority of the agency. While this may be the case, the SBRFB wants to increase communication and understanding of the expectations of the report. The SBRFB also strongly urges agencies to use the reporting template provided by SBRFB for its bi-annual report.

During every odd-numbered Fiscal Year, the attached chart shall include a Column J, denoting the grade that each agency has received. The SBRFB will provide a template for each agency to use when submitting its report. The evaluation criteria for the bi-annual report for FY2013 shall include:

- A Agency submitted a report by June 13, 2013, listed each rule\*, described the specific purpose of the rule and the reason for the rule's continued existence.
- B Agency submitted a report by June 13, 2013, listed each rule\*, but either did not describe the specific purpose of the rule and/or the reason for the rule's continued existence.
- C Agency submitted a report by June 13, 2013, but failed to list each rule\* or provide the specific purpose of the rule and/or reason for the rule's continued existence.
- D Agency failed to submit a report by June 13, 2013.
- F Agency failed to submit a report.

\* While the SBRFB understands that some agencies group similar rules together in the report because of the sheer volume of information to be presented, the SBRFB reserves the right to request more specific information regarding such "bundled" rules.

# SBRFB Agency Evaluations

## 2011 Fiscal Year

A	B	C	D	E	F	G	H	J	K
STATE AGENCY	RESPOND TO SMALL BUSINESS COMMENTS IN TIMELY MANNER	PROVIDE COMPLETE RESPONSE TO SMALL BUSINESS COMMENTS	PARTICIPATE IN REGULATORY FAIRNESS MEETINGS	PARTICIPATE IN REGULATORY FAIRNESS PUBLIC HEARINGS	TRAIN AGENCY STAFF ON SBRFB PROGRAMS	AGENCY RESPONSIVENESS TO SBRFB REQUESTS	COMPLETE SMALL BUSINESS IMPACT STATEMENT	NOTIFY SBRFB ON SMALL BUSINESS COMMENTS IN PUBLIC HEARINGS	CONDUCT BIENNIAL EVALUATIONS OF RULES AFFECTING SMALL BUSINESS
Office of Administration	N/A	N/A	Four of Five	N/A	A	N/A	N/A	N/A	A
Agriculture	N/A	N/A	Four of Five	N/A	A	N/A	Yes	N/A	A
Conservation	N/A	N/A	Four of Five	N/A	A	N/A	N/A	N/A	Not Required to File
Corrections	A	A	Four of Five	N/A	A	A	N/A	N/A	D
Economic Development	N/A	N/A	Four of Five	N/A	A	N/A	N/A	N/A	B
Public Service Commission	N/A	N/A	Four of Five	N/A	A	N/A	N/A	N/A	B
Elementary & Secondary Education	N/A	N/A	Four of Five	N/A	A	N/A	N/A	N/A	B
Missouri Assistive Technology	N/A	N/A	N/A	N/A	A	N/A	N/A	N/A	B
Higher Education	N/A	N/A	Four of Five	N/A	A	N/A	N/A	N/A	A
Health & Senior Services	A	A	Four of Five	A	A	A	Yes	Yes	A
Insurance, Financial Institutions & Professional Registration	N/A	N/A	Four of Five	N/A	A	N/A	Yes	Yes	A
Labor & Industrial Relations	N/A	N/A	Four of Five	N/A	A	N/A	Yes	N/A	A
Mental Health	N/A	N/A	Four of Five	N/A	A	N/A	Yes	N/A	A
Natural Resources	N/A	N/A	Four of Five	N/A	A	N/A	Yes	Yes	A
Public Safety	N/A	N/A	Four of Five	N/A	A	N/A	Yes	N/A	Public Safety-A; Missouri Gaming-C
Revenue	N/A	N/A	Four of Five	N/A	A	N/A	Yes	N/A	A
Social Services	N/A	N/A	Four of Five	N/A	A	N/A	Yes	N/A	A
Transportation	N/A	N/A	Four of Five	N/A	A	N/A	Yes	N/A	A
	N/A-No Small Business Comments received regarding the State Agency in 2011FY		State Agency Liaisons were not required to attend the 9/15/2010 in Kansas City						